



# TEXAS ALCOHOLIC BEVERAGE COMMISSION

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Dick Durbin, Administrator

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August 13, 1993

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The Honorable Dan Morales  
Attorney General  
The State of Texas  
Supreme Court Building  
Austin, Texas 78711

Opinion

MBJ  
FILE # 21896-93

I.D.# 21896 23119

Dear Mr. Morales:

RQ-625

Section 38(a) of the Bingo Enabling Act provides:

Each licensee under this Act shall furnish to the commission a cash bond, a bond from a surety company chartered or authorized to do business in this state, certificates of deposit, certificates of savings or U.S. treasury bonds or, subject to the discretion and approval of the commission, an assignment of negotiable stocks or bonds, or such other security as the commission may deem sufficient to secure the payment of required taxes under this Act. The commission shall fix the amount of the bond or security in each case, taking into consideration the amount of money that has or is expected to become due from the licensee under this Act. The amount of the bond or security required by the commission may not exceed three times the amount of the licensee's average quarterly reports.

Bingo Regulation and Tax Rule 55.545 (a)(4) (16 T.A.C. §55.545(a)(4)) reads in part:

Bond or other security. Each application for an annual license to conduct bingo must be accompanied by a bond or other security equal to the applicant's estimated quarterly tax liability. If the amount is estimated to be less than \$1,900, no bond or other security will be required, unless the Commission determines a bond or other security is necessary based on the applicant's history at recordkeeping, reporting, and payment of tax. No new bond will be required upon renewal if the licensee would be eligible to have an existing bond released under subparagraph (D) of this paragraph. If a bond or other form of security is required, no license will be issued until such bond or other security has been posted.

(A) Type of bond. Only the following types of bonds are acceptable:

- (i) cash (personal checks payable to the State Treasurer are acceptable);

- (ii) irrevocable assignments (executed on forms approved by the Commission) of certificates of deposit or savings accounts in banks, savings and loan institutions, or credit unions whose deposits are insured by an agency of the United States Government;
  - (iii) United States Treasury bonds of a type that are readily convertible to cash; or
  - (v) a surety bond executed on a form approved by the Commission and issued by a surety company chartered or authorized to do business in the State of Texas. The bond will constitute a new and separate obligation in the penal sum shown for each calendar year or a portion of a year while the bond is in force. The bond must be executed by an attorney-in-fact appointed by the surety. The appointing instrument must be properly notarized and physically attached to the bond.
- (E) Reinstatement. If a deficiency determination becomes final for a licensee who has had its bond released or for whom a bond was not required a new bond will be required at the time the licensee next renews its license.

Several organizations applying to renew their licenses to conduct bingo which have had tax determinations become final have been requested to furnish bond or other security as required by 16 T.A.C. §55.545 (a)(4)(E). Those organizations wish to furnish as security for payment of taxes and bingo prize fee their written promise to pay those taxes and fees.

May the Texas Alcoholic Beverage Commission accept as security under Section 38(a) of the Bingo Enabling Act a written promise of the licensee to pay taxes and bingo prize fees if it deems that promise sufficient security to secure the payment of required taxes and prize fees?

If you have any questions, please call Robert C. Falls at 206-3280.

Sincerely,

  
Dick Durbin  
Administrator

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